

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural
Resources Division
United States Department of Justice
Washington, D.C. 20530

DAVID B. GLAZER
Environment and Natural
Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6491
Facsimile: (415) 744-6476

EDWARD H. KUBO, JR. 2499
United States Attorney
District of Hawai`i

RACHEL MORIYAMA 3802
Assistant United States Attorney
Room 6-100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawai`i 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958

MARK S. BENNETT 2672
Attorney General

KATHLEEN S. HO 3424
Deputy Attorney General
Office of the Attorney General
465 South King Street, Room 200
Honolulu, Hawai`i 96813
Telephone: (808) 587-3062
Facsimile: (808) 587-3077

Attorneys for Plaintiffs United States and State of Hawai`i

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI`I

UNITED STATES OF AMERICA, and)	
DEPARTMENT OF HEALTH, STATE OF)	NO.
HAWAI`I)	
Plaintiffs,)	
)	
)	
v.)	COMPLAINT FOR CIVIL PENALTIES
)	AND INJUNCTIVE RELIEF
)	
JAMES H. PFLUEGER; PFLUEGER)	
PROPERTIES; AND PILA`A 400 LLC,)	
)	
Defendants.)	

Plaintiff United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), by the Attorney General of the United States and through the undersigned counsel, and the Attorney General of the State of Hawai`i, acting at the request of the Department of Health, State of Hawai`i ("DOH"), hereby allege as follows:

JURISDICTION

1. The United States and DOH bring this complaint for civil penalties and injunctive relief, pursuant to Sections 309(b) and (d), and 504 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b), (d) & 1364, and Section 13 of the Rivers And Harbors Act of 1899 ("R&HA"), 33 U.S.C. § 407, also known as the "Refuse Act," and pursuant to Section 342D-50(a) of the Hawai`i Revised Statutes (2004) ("HRS"). This Court has jurisdiction over the parties to, and the subject matter of, this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a) & 1367, and 33 U.S.C. § 1319(b).

2. Venue is proper in this judicial district, pursuant to 28 U.S.C. §§ 1391(b), (c) & 1395(a), and 33 U.S.C. § 1319(b), because the transactions and events giving rise to this action occurred in this district and the Defendants reside here.

3. The undersigned attorneys for the U.S. Department of Justice are authorized to bring this action, pursuant to CWA Section 506, 33 U.S.C. § 1366, R&HA Section 17, 33 U.S.C. § 413, and 28 U.S.C. §§ 515, 516 & 519.

4. The undersigned attorneys for DOH and the Hawai`i Attorney General are authorized to bring this action pursuant to

Section 342D-11, HRS.

PARTIES

5. Plaintiffs are the United States of America, acting on behalf of EPA, and the State of Hawaii, Department of Health.

6. Defendant James H. Pflueger is an individual residing in Honolulu, O`ahu, Hawai`i. Defendant is sued in his individual capacity and as general partner of Defendant Pflueger Properties. Defendant is also a manager of Defendant Pila`a 400 LLC. In all capacities, Defendant Pflueger is a "person" within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).

7. Defendant Pflueger Properties is a Hawai`i limited partnership doing business, among other places, on O`ahu, Hawai`i, and Kaua`i, Hawai`i. Defendant Pflueger Properties is a "person" within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).

8. Defendant Pila`a 400 LLC is a Hawai`i limited liability company doing business, among other places, on O`ahu, Hawai`i, and Kaua`i, Hawai`i. Defendant Pila`a 400 LLC is a "person" within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).

STATUTORY BACKGROUND

The Clean Water Act ("CWA") and the Hawaii Water Pollution Law ("WPL")

9. CWA Section 301, 33 U.S.C. § 1311, prohibits discharges of pollutants except in accordance with that Section and, *inter alia*, CWA Sections 402 and 404, 33 U.S.C. §§ 1342, 1344. WPL Section 342D-50(a) prohibits the discharge of water

pollutants into state waters except in compliance with chapter 342D and implementing rules.

10. CWA Section 308(a), 33 U.S.C. § 1318(a), and Chapter 342D, HRS require the owner or operator of any point source to make such reports or provide such information as required by EPA to carry out, *inter alia*, CWA Section 402, 33 U.S.C. § 1342.

11. CWA Section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" broadly to cover a wide range of materials including, *inter alia*, dredged spoil, rock, sand, and cellar dirt. WPL Section 342D-1 defines "water pollutant" broadly to cover a wide range of materials, including, *inter alia*, dredged spoil, rock, sand, and cellar dirt.

12. CWA Section 502(19), 33 U.S.C. § 1362(19), defines "pollution" as "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water."

13. CWA Section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to mean, *inter alia*, the addition of any pollutant to "navigable waters."

14. CWA Section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" to mean "the waters of the United States, including the territorial seas."

15. CWA Section 502(14), 33 U.S.C. § 1362(14), and Hawai`i Administrative Rules ("HAR") 11-55-01 define "point source" to mean, *inter alia*, "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure

. . . from which pollutants are or may be discharged."

16. CWA Section 404, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

17. CWA Section 402, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System ("NPDES") program, under which authorized states, with EPA approval, may issue permits, including storm water permits, governing the discharge of pollutants from regulated sources. The State of Hawai`i, through DOH, has in place an EPA-approved NPDES program.

18. CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.21(c) & 122.26(c), which implement CWA Sections 308 and 402(p), require *inter alia* that potential dischargers apply for storm water permits, issued under the NPDES program, governing any discharge of storm water associated with regulated industrial activities, and obtain such permits prior to any discharges of storm water. In applying for a storm water permit, a potential permittee must provide the necessary information on the basis of which EPA or the state permitting agency may evaluate the appropriateness of a permit and the necessary measures that should be put into place by the permittee to avoid or mitigate any storm water discharges.

19. 40 C.F.R. § 122.26(b)(14)(x) and HAR 11-55-04(a) include, in their definitions of storm water discharge associated with "industrial activity," "construction activity including clearing, grading, and excavation activities." Storm water

discharges associated with such construction activities "that result in the disturbance of less than five acres of total land area" are excluded from regulation, unless the construction activities are "part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more[.]"

20. Under 40 C.F.R. § 122.26(c) and HAR 11-55-04(a), dischargers of storm water associated with industrial activity, including regulated construction activities, are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Under 40 C.F.R. § 122.21(c), a discharger proposing a new discharge of storm water associated with construction activity covered by § 122.26(b)(14)(x) must submit an application 90 days before the date construction is to commence, or by the deadlines provided by the terms of any applicable general permit.

21. On September 8, 1997, DOH adopted, among other things, NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activities, HAR Chapter 11-55 Appendix C (the "General Permit"). This permit became effective on September 22, 1997.

22. The General Permit requires that all owners and operators of property where construction activity occurs equal to or in excess of five acres, or where a construction site is part of a larger common plan of development or sale, must file a complete Notice of Intent ("NOI") to be covered by the General Permit in order to comply with the requirements of EPA's storm water regulations. The NOI must be filed not less than 30 days

before the proposed starting date of any discharge.

23. An owner or operator who is required to have an NPDES permit for construction-related storm water discharges and is not eligible for coverage under the General Permit must apply for an individual NPDES permit in accordance with the requirements of 40 C.F.R. § 122.21 and HAR 11-54-04.

24. Pursuant to CWA Section 309(a)(3), 33 U.S.C. § 1319(a)(3), whenever any person is found to be in violation of, *inter alia*, CWA Section 301, 33 U.S.C. § 1311, CWA Section 308, 33 U.S.C. § 1318, or any condition or limitation contained in a permit issued under CWA Section 402 or 404, 33 U.S.C. §§ 1342, 1344, EPA may issue an administrative order requiring compliance, or EPA may authorize suit in federal district court, pursuant to CWA Section 309(b).

25. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), EPA may bring suit for appropriate relief, including a temporary or permanent injunction, for any violation for which the Agency could issue an administrative order pursuant to Section 309(a). Such injunctive relief may include an order restraining the violator from further violations or compelling the violator to comply with the Act.

26. Pursuant to CWA Section 309(d) and 40 C.F.R. §§ 19.2 & 19.4 (Table), a person violating, *inter alia*, CWA Section 301, 308, 402, or 404, or an administrative order issued under CWA Section 309(a), shall be subject to a civil penalty not to exceed \$32,500 per day for each violation occurring after March 15, 2004, and \$27,500 per day for each violation occurring between January 31, 1997, and March 15, 2004.

27. Pursuant to WPL Section 342D-9, whenever any person is found to be in violation of the WPL, DOH may issue an administrative order requiring compliance.

28. Pursuant to WPL Section 342D-11, DOH may bring suit for appropriate injunctive relief to prevent any violation of Chapter 342D, HRS.

29. Under WPL 342D-30, HRS, Defendants are liable for civil penalties of \$25,000 per day for each day of violation.

30. CWA Section 504, 33 U.S.C. § 1364, provides that, where a pollution source "is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons," EPA may authorize suit to "restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary."

The Rivers And Harbors Act

31. R&HA Section 13, 33 U.S.C. § 407, provides in relevant part:

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged or deposited either from, out of any ship, barge or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill or any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water

32. The term "refuse" under R&HA Section 13 includes all manner of foreign substances and pollutants.

33. Regulations promulgated under the R&HA define "navigable waters" as

those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

33 C.F.R. § 329.4. The Pacific Ocean in the area into which Defendants have discharged refuse is a "navigable water" within the meaning of R&HA Section 13.

NOTICE TO THE STATE OF HAWAI`I

34. In accordance with CWA Section 309(b), notice of the commencement of this action has been given to the State which, through DOH, has joined this action as a plaintiff.

GENERAL ALLEGATIONS

35. This action concerns discharges associated with construction and related activities at property located near Kilauea, Kaua`i, Hawai`i, including area adjacent to the Kaloko Reservoir, and further identified by Tax Map Key (4) 5-1-02:01, (4) 5-1-04:08 and (4) 5-1-04:37, together with associated kuleana owned by Defendants within such parcels (the "Property"). The parcel at Tax Map Key (4) 5-1-02:01 is further referred to as "the Kaloko Property," and the parcels at Tax Map Key (4) 5-1-04:08 and (4) 5-1-04:37 are further referred to as "the Pila`a Property."

36. The Pacific Ocean offshore from the Pila`a Property and streams and other waters draining the Property and ultimately flowing to the Pacific Ocean are all "navigable waters" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), and "waters of the United States" as defined by EPA regulations at 40 C.F.R. §§ 122.2 and 232.2.

37. On April 10, 1997, Defendant Pflueger Properties purchased the Pila`a Property from the Mary N. Lucas Trust; on January 23, 2001, Defendant Pila`a 400 LLC acquired title to the Pila`a Property from Defendant Pflueger Properties. At all times relevant to the Complaint, one or more of the Defendants either owned, leased, or otherwise controlled the Kaloko Property or otherwise controlled the activities that occurred on the Kaloko Property.

38. Defendants never applied for or received an individual NPDES permit for any discharges from either the Kaloko Property or the Pila`a Property. Defendants did not file a complete NOI to be covered under the General Permit for their discharges of storm water associated with their construction activities at the Pila`a Property until August 27, 2002, at the earliest, and at the Kaloko Property not until August 21, 2003. Defendants obtained coverage under the General Permit for the Pila`a Property on August 30, 2002, and for the Kaloko Property on June 10, 2004, when DOH issued Notices of General Permit Coverage.

39. Prior to receiving authorization under the General Permit or any other NPDES permit, Defendants undertook construction activities at the Property.

40. Such construction activities included extensive grading, earthmoving, and road construction or improvement, which together has disturbed more than five acres of land.

41. Construction activities undertaken by Defendants at the Kaloko Property have included, among other things, clearing and grading an area above Kaloko Reservoir and the construction of a road approaching the east side of the reservoir, including the creation of cut slopes and associated grading. This construction activity began approximately in November 1997, at the latest, and continued until at least July 2002.

42. The construction activities Defendants undertook on the Pila`a Property were part of a "larger common plan of development or sale," within the meaning of 40 C.F.R. § 122.26(b)(14)(x) and HAR Chapter 11-55, as indicated in a subdivision plan submitted to the Kaua`i County Planning Commission on December 10, 1999, and preliminarily approved by the Commission on April 27, 2000. The Commission's notice of approval stated that "[m]ore than five (5) acres of total land areas [sic] will be disturbed. A[n NPDES] permit for storm water discharge will be required if the storm water runoff is allowed to discharge into State waters."

43. Construction activities undertaken by Defendants at the Pila`a Property have included, among other things, grading an area to construct a road known as the "New Access Road" (partly in the area known as "Gulch 2"), in or around June 2000, and grading an area known as the "Plateau," beginning at least by April 2000.

44. On or about November 26, 2001, rains caused storm water containing dirt, soil, silt, sediment, and similar materials to be discharged from the area of the newly graded Plateau to reef flats and other areas below and offshore of the Pila`a Property in the Pacific Ocean.

45. In or around January 2002, Defendants installed a culvert, approximately 24 inches in diameter and 40 feet in length, beneath the New Access Road. The culvert conveyed storm water and other runoff from the Pila`a Property directly to the Pacific Ocean.

46. On or about March 25, 2002, a DOH inspector observed that Defendants had discharged, or caused or allowed to be discharged, storm water containing dirt, soil, silt, sediment, and similar materials from the Pila`a Property to the Pacific Ocean.

47. Based on observed discharges, rainfall data from the rain gauge closest to the Property, inspections, and other evidence, during times of significant rainfall Defendants likely discharged storm water containing dirt, soil, silt, sediment, and similar materials from the Property to waters of the United States, including the Pacific Ocean, or otherwise caused or allowed those materials to enter waters of the United States, including the Pacific Ocean, on numerous days after Defendants began construction activities.

48. As part of their construction activities, Defendants, or persons acting on their behalf, discharged dredged or fill material into waters of the United States at various locations on the Pila`a Property without a permit under CWA

Section 404, 33 U.S.C. § 1344, and HAR 11-5-04.

49. Beginning at least as of June 1998, Defendants, or persons acting on their behalf, used mechanized land-clearing and earth-moving equipment to discharge dirt, rock, and other fill material into Pila`a Stream (also known as Gulch 4), to create or enlarge two impoundments in the stream.

50. Beginning at least as of late 1999, Defendants, or persons acting on their behalf, used mechanized land-clearing and earth-moving equipment to discharge dirt, rock, and other fill material into a stream, known as Gulch 3, to create or enlarge seven impoundments within the stream.

51. Beginning at least as of June 2000, during the construction of the New Access Road, Defendants, or persons acting on their behalf, used mechanized land-clearing and earth-moving equipment to discharge dirt, rock, and other fill material into a portion of the bed of an unnamed stream, known as Gulch 2.

52. Beginning at least as of November 2001, Defendants, or persons acting on their behalf, installed culverts under the New Access Road causing the further discharge of fill material into Gulch 2 and diverting the path of the stream away from its natural course.

53. Gulch 2, Gulch 3, and Pila`a Stream (or Gulch 4) are each tributaries to the Pacific Ocean and are thus waters of the United States as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and the regulations at 40 C.F.R. § 232.2.

54. Mechanized land-clearing and earth-moving equipment are point sources as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

55. Defendants did not obtain authorization from the Secretary of the Army for these discharges of dredged or fill material into waters of the United States as required by CWA Sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

FIRST CLAIM FOR RELIEF
Unpermitted Discharges of Dredged or Fill Material

56. The allegations set forth in Paragraphs 1 through 55, above, are incorporated herein by reference, as if fully set forth below.

57. Beginning at least as of June 1998, one or more of the Defendants, or persons acting on their behalf, discharged dredged or fill material into three tributaries on the Pila`a Property known as Gulch 2, Gulch 3, and Pila`a Stream (or Gulch 4).

58. Defendants have violated and continue to violate CWA Section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged or fill material into waters of the United States, at the Pila`a Property.

59. Each day that such material remains in place constitutes a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

60. Under CWA Section 309(d), 33 U.S.C. § 1319(d), Defendants are liable for a civil penalty not to exceed \$32,500 per day for each violation occurring after March 15, 2004, and \$27,500 per day for each violation occurring between January 31, 1997, and March 15, 2004.

SECOND CLAIM FOR RELIEF
Failure to Obtain Coverage Under a Storm Water Permit

61. The allegations set forth in Paragraphs 1 through 47, above, are incorporated herein by reference, as if fully set forth below.

62. Pursuant to 40 C.F.R. §§ 122.21(c) & 122.26(c), and 342D-50, HRS, and 11-55-04, HAR, Defendants should have applied for NPDES permit coverage before the discharge of any storm water associated with their construction activities. Pursuant to General Permit ¶ 3(a), Defendants should have submitted a complete Notice of Intent ("NOI") to be covered under the General Permit for their construction activities at the Property at least thirty days prior to any discharges of storm water. That NOI was required to include extensive site characterization information, a detailed description of all proposed construction activities, an analysis of drainage patterns and anticipated run-off, and a description of all management practices and mitigation measures proposed to address storm water run-off.

63. Alternatively, Defendants should have applied for an individual permit at least 180 days prior to any storm water discharges, pursuant to 40 C.F.R. §§ 122.21(c) & 122.26(c) and HAR 11-55-04(a)(1), and should have submitted the detailed information required by those provisions.

64. Defendants did not obtain coverage under the General Permit until August 30, 2002, for the Pila`a Property and until June 10, 2004, for the Kaloko Property.

65. Defendants' failure to submit the information required either for coverage under the General Permit, or for

issuance of an individual permit, for their discharges of storm water associated with construction activities at the Property, by the deadline required by EPA's storm water regulations and Hawai'i's General permit, is a violation of CWA Section 308, 33 U.S.C. § 1318.

66. Under CWA Section 309(d), 33 U.S.C. § 1319(d), Defendants are liable for a civil penalty not to exceed \$32,500 per day for each violation occurring after March 15, 2004, and \$27,500 per day for each violation occurring between January 31, 1997, and March 15, 2004.

67. Under WPL 342D-30, HRS, Defendants are liable for civil penalties of \$25,000 per day for each day of violation.

THIRD CLAIM FOR RELIEF
Unpermitted Discharges of Pollutants

68. The allegations set forth in Paragraphs 1 through 47, above, are incorporated herein by reference, as if fully set forth below.

69. Each day of Defendants' unpermitted discharges of pollutants, from the Pila'a Property and the Kaloko Property, including storm water associated with construction activities, is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and 342D-50, HRS, and 11-55-04, HAR.

70. Under CWA Section 309(d), 33 U.S.C. § 1319(d), Defendants are liable for a civil penalty not to exceed \$32,500 per day for each violation occurring after March 15, 2004, and \$27,500 per day for each violation occurring between January 31, 1997, and March 15, 2004.

71. Under WPL 342D-30, HRS, Defendants are liable for civil penalties of \$25,000 per day for each day of violation.

FOURTH CLAIM FOR RELIEF
Injunction to Remedy Unlawful Discharges of Fill

72. The allegations set forth in Paragraphs 1 through 55, above, are incorporated herein by reference, as if fully set forth below.

73. Defendants have unlawfully discharged dredged or fill material into waters of the United States and have allowed such material to remain in place, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

74. Under CWA Section 309(b), 33 U.S.C. § 1319(b), this Court may issue an order requiring Defendants to remedy their continuing and unlawful discharge of dredged or fill material into waters of the United States.

FIFTH CLAIM FOR RELIEF
Injunction to Comply with Storm Water Requirements

75. The allegations set forth in Paragraphs 1 through 47, above, are incorporated herein by reference, as if fully set forth below.

76. Defendants have failed to comply with the requirements of the General Permit and EPA's storm water regulations and have discharged storm water from the Property, in violation of CWA Sections 301(a) and 402(p), 33 U.S.C. §§ 1311(a) & 1342(p), and 342D-50, HRS, and 11-55-04, HAR.

77. Under CWA Section 309(b), 33 U.S.C. § 1319(b), and 342D-11, HRS, this Court may issue an order requiring Defendants to remedy any continuing noncompliance with the requirements of the General Permit and EPA's storm water regulations and to

remedy the effects of any past or ongoing noncompliance.

SIXTH CLAIM FOR RELIEF
Injunction to Restore Areas Impacted by Discharges

78. The allegations set forth in Paragraphs 1 through 47, above, are incorporated herein by reference, as if fully set forth below.

79. The pollution resulting from Defendants' discharges or threatened discharges of storm water from the Pila`a Property has caused damage, and may cause further damage in the future, to the reef flats and other areas below and offshore of the Pila`a Property. On information and belief, those reef flats and other areas are used by persons for subsistence activities, including fishing and limu-gathering. Defendants' discharges are therefore presenting an imminent and substantial endangerment, within the meaning of CWA Section 504, 33 U.S.C. § 1364, to the livelihood, and therefore to the welfare, of those persons who depend upon areas adversely affected by Defendants' discharges.

80. Pursuant to CWA Section 504, Defendants are liable for undertaking such actions as are necessary to abate the endangerment resulting from past discharges of pollution and to prevent future discharges of pollution that may present an imminent and substantial endangerment to the livelihood and welfare of persons adversely affected by such discharges.

81. Defendants' discharges of sediment-laden storm water run-off constitute discharges or deposits of refuse, within the meaning of R&HA Section 13, 33 U.S.C. § 407. Defendants are therefore liable for abating and remedying those discharges.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs United States of America and State of Hawai`i pray for a judgment of this Court:

1. Assessing civil penalties against Defendants, pursuant to CWA Section 309(d), 33 U.S.C. § 1319(d), of up to \$32,500 per day for each day of violation of the Clean Water Act, as alleged herein, occurring after March 15, 2004, and up to \$27,500 per day for each day of violation occurring between January 31, 1997, and March 15, 2004;

2. Assessing civil penalties against Defendants, pursuant to 342D-30, HRS, not to exceed \$25,000 per day for each violation of 342D, HRS, as alleged herein;

3. Enjoining Defendants, pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 342D-11, HRS, to take all measures necessary to comply with the requirements of the General Permit and EPA's storm water regulations and necessary to remedy Defendants' unlawful discharge of dredged or fill material, and to abate all further discharges of pollutants or dredged or fill material;

4. Enjoining Defendants, pursuant to CWA Section 504, 33 U.S.C. § 1364, and R&HA Section 13, 33 U.S.C. § 407, to abate all further discharges or threatened discharges of pollution to the reef flats and other areas below and offshore of the Pila`a Property and to restore or replace the areas damaged by any such discharges;

5. Awarding the United States and the State their costs in this action; and

6. Granting such further relief as may be appropriate.

Respectfully submitted,

Dated: 2/22/06

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural resources
Division
United States Department of Justice
Washington, D.C. 20530

Dated: 3-1-06

DAVID B. GLAZER
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6491
Facsimile: (415) 744-6476

Dated: _____

KATHLEEN S. HO
Deputy Attorney General
Health and Human Services Division
Office of the Attorney General
465 South King Street, Room 200
Honolulu, Hawai'i 96813

OF COUNSEL:

Laurie Kermish, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

6. Granting such further relief as may be appropriate.

Respectfully submitted,

Dated: _____

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural resources
Division
United States Department of Justice
Washington, D.C. 20530

Dated: _____

DAVID B. GLAZER
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6491
Facsimile: (415) 744-6476

Dated: FEB 24 2006

KATHLEEN S. HO
Deputy Attorney General
Health and Human Services Division
Office of the Attorney General
465 South King Street, Room 200
Honolulu, Hawaii 96813

OF COUNSEL:

Laurie Kermish, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105